

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #15	CCRB Case #: 201706354	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 07/30/2017 12:25 AM	Location of Incident: 400 Brook Avenue	Precinct: 40	18 Mo. SOL 1/30/2019	EO SOL 1/30/2019	
Date/Time CV Reported Sun, 07/30/2017 11:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/03/2017 11:05 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Manolin Molina	27653	936051	PSA 7
2. POM Jose Cordero	14899	956547	PSA 7
3. Officers			
4. SGT Jose Caban	01324	929805	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Cordero	Abuse: Police Officer Jose Cordero stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Manolin Molina	Abuse: Police Officer Manolin Molina frisked § 87(2)(b)	
C. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b) and § 87(2)(b)	
D.POM Jose Cordero	Abuse: Police Officer Jose Cordero searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
E.SGT Jose Caban	Abuse: Sergeant Jose Caban searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.POM Jose Cordero	Abuse: Police Officer Jose Cordero issued a summons to § 87(2)(b)	

Case Summary

On July 30, 2017 § 87(2)(b) called 911 and was transferred to the IAB Command Center where she filed this complaint. Original Log #2017-29381 was generated and it was received at the CCRB on August 3, 2017.

On July 30, 2017, at approximately 12:25am, in the vicinity of 400 Brook Avenue in the Bronx, PO Jose Cordero stopped § 87(2)(b) and § 87(2)(b) in their vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was asked out of the vehicle and PO Manolin Molina frisked him (**Allegation B: Abuse of Authority**, § 87(2)(g) Unidentified officers used discourteous language when speaking with § 87(2)(b) and § 87(2)(b) (**Allegation C: Discourtesy**, § 87(2)(g) § 87(2)(g)). PO Cordero leaned into the opened front passenger door and searched the vehicle (**Allegation D: Abuse of Authority**, § 87(2)(g) Sgt. Jose Caban then leaned into the passenger door window and searched the vehicle (**Allegation E: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was handcuffed and taken to the PSA 7 Stationhouse and released with two disorderly conduct Summonses and a Desk Appearance Ticket for § 87(2)(b) § 87(2)(b) (**Allegation F: Abuse of Authority**, § 87(2)(g) § 87(2)(b)).

Video footage of segments of the incident was taken by § 87(2)(b) from her mobile phone and was provided to the investigation via IAB.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jose Cordero stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that PO Cordero stopped the vehicle that § 87(2)(b) was driving and § 87(2)(b) was the passenger in.

Despite repeated contact attempts both § 87(2)(b) and § 87(2)(b) were uncooperative with this investigation. Thus neither provided a sworn statement. As a result, their actions preceding the stop are not available to this investigation.

PO Cordero testified that, while driving on Brook Avenue around East 145th Street in the Bronx, he observed § 87(2)(b)'s vehicle via his rear view mirror. He observed the vehicle travelling at a high rate of speed, changing lanes multiple times without signaling, and overtaking multiple other vehicles. PO Cordero testified that he did not know how many vehicles § 87(2)(b) passed nor did he know how fast § 87(2)(b) was driving. He stated that he was driving 25MPH, which is the speed limit, and § 87(2)(b) was driving substantially faster. § 87(2)(b) then tailgated behind the police vehicle for approximately one half of a block, honked at the police vehicle, and pulled around the police vehicle without signaling at any point. PO Cordero testified that he decided to pull the vehicle over for these observed moving infractions. PO Cordero testified that he used his discretion not to issue § 87(2)(b) any summonses for these moving violations because she was acting respectful during the stop and because she had an infant in the vehicle (BR 01).

Both Sgt. Caban and PO Molina testified that while travelling on Brook Avenue in the Bronx, PO Cordero informed them that he observed a vehicle via his rear view mirror travelling at a high rate of speed and changing lanes without signaling. Both also testified that once the vehicle passed theirs', they also observed it travelling at a high rate of speed and changing lanes without signaling. They both testified that these were the reasons for the vehicle stop (BR 02, BR 03).

Signals must be used to indicate an intention to turn, change lanes, or start from a parked position. New York State Vehicle and Traffic Law Article 28, Section 1163 (BR 04).

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Manolin Molina frisked § 87(2)(b)

During her unverified phone statement with PO Gregory Karnow of IAB, § 87(2)(b) alleged that § 87(2)(b) was frisked. The officers confirmed that § 87(2)(b) was indeed frisked. § 87(2)(g)

§ 87(2)(g)

While filing this complaint with PO Karnow, § 87(2)(b) alleged that one of the two officers on the passenger side of the vehicle patted the outside of § 87(2)(b)'s clothing soon after he exited the vehicle. She did not say which officer did so (BR 05).

All three officers testified that § 87(2)(b) was frisked. PO Molina and PO Cordero could not recall who conducted the frisk. Sgt. Caban testified that PO Molina conducted the frisk. § 87(2)(g)

PO Molina testified that after § 87(2)(b) was asked out of the vehicle, either Sgt. Caban or he frisked § 87(2)(b). PO Molina testified that § 87(2)(b) was frisked for the safety of the officers. PO Molina believed it was possible that § 87(2)(b) could have had a weapon on his person, however he did not observe anything specific that suggested that § 87(2)(b) had a weapon on him. Neither of his partners articulated any observations to him that suggested that § 87(2)(b) may have a weapon on his person. PO Molina testified that § 87(2)(b) was frisked on the outside of his front and back waist area. He was frisked there because that is commonly where weapons are kept.

Sgt. Caban testified that, once § 87(2)(b) was out of the vehicle, PO Molina led him to the rear of the vehicle. PO Molina then frisked up both of § 87(2)(b)'s legs, his chest area, and his arms. Sgt. Caban testified that he himself believed it was possible that § 87(2)(b) possessed a weapon. He believed that because while § 87(2)(b) was seated in the vehicle, § 87(2)(b) had motioned down towards his right lower leg with his right hand approximately two to three times over approximately one minute. Sgt. Caban could not see where § 87(2)(b) was reaching towards and

had told § 87(2)(b) twice to keep his hands where he could see them. Sgt. Caban also believed it was possible that § 87(2)(b) had a weapon because § 87(2)(b) was raising his voice and cursing. Sgt. Caban testified that once § 87(2)(b) was out of the vehicle, he observed § 87(2)(b)'s right leg and did not see anything of note. He specifically did not observe any bulges. Sgt. Caban testified that he did not instruct PO Molina to frisk § 87(2)(b) nor did he discuss with PO Molina whether or not to do so. In addition, Sgt. Caban did not relay any of his observations to PO Molina.

A frisk requires reasonable suspicion that an individual is in possession of a weapon. People v. DeBour, 40 N.Y.2d 210 (BR 06).

§ 87(2)(g)
[REDACTED]

Allegation (C) Discourtesy: Officers spoke discourteously to § 87(2)(b) and § 87(2)(b)

In the video footage provided to the investigation, male voices can be heard saying various iterations of the word “fuck.” In her phone conversation with PO Karnow, § 87(2)(b) alleged that Sgt. Caban and PO Cordero both used profanity during the incident.



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In video footage, an officer can be heard stating, “You’re fucking crazy.” Other male voices can be heard using other iterations of the word “fuck.” While the video does not clearly depict who is saying what, the back and forth between § 87(2)(b)'s voice and males voices suggests that at least some of the profanity is stated by officers (BR 07, BR 08).

All three officers denied making any of the profane statements that can be heard in the video footage. In addition, all three denied making, or hearing either of the other officers making, any of the statements that were alleged during § 87(2)(b) unverified phone statement with PO Karnow. None of the officers were able to identify any of the voices heard in the audio (BR 01, BR 02, BR 03).

§ 87(2)(g)
[REDACTED] However, the investigation was unable to obtain statements from either § 87(2)(b) or § 87(2)(b) to aid in the identification of these subjects. § 87(2)(g)
[REDACTED]

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Jose Cordero searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (E) Abuse of Authority: Sergeant Jose Caban searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that PO Cordero and Sgt. Caban conducted separate searches of the vehicle. § 87(2)(g)

§ 87(2)(g)



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Video footage depicts PO Cordero as he approaches the front passenger door and leans into the cab of the vehicle. As he does so, he asks, “Where’s the card?” He then states, “The PBA card, he threw it over here.” After leaning in, he exits the cab of the vehicle with a yellow envelope in his hand (BR 09).

In her phone call with PO Karnow, § 87(2)(b) states that in the video footage, an officer, identified as PO Cordero, can be seen entering the vehicle in order to obtain the PBA card (BR 05).

During his CCRB statement, PO Cordero initially denied entering the vehicle at any point. Upon viewing the video footage, he first testified that he had looked into the open door but did not lean in. After viewing the footage multiple times, he confirmed that he did lean into the cab of the vehicle through the front passenger’s door. He testified that he did so to ensure that “everything was okay,” within the vehicle. Prior to leaning in, he did not make any observations that led him to believe that anything was wrong within the vehicle. PO Cordero looked on the floor of the passenger seat as well as the seat itself. He testified that nothing was recovered. PO Cordero denied that he entered the vehicle to obtain the PBA card, even after reviewing the video’s audio multiple times. PO Cordero testified that the yellow object that he can be seen exiting the vehicle with is an envelope containing the vehicles registration, however he believed that he had obtained that envelope upon initial approach and thus had it when he leaned into the vehicle (BR 01).

Sgt. Caban testified that, after both § 87(2)(b) and § 87(2)(b) were out of the vehicle, he leaned his head and upper torso through the opened window on the closed front passenger’s door of the vehicle. Sgt. Caban looked inside with his flashlight then exited the vehicle. Sgt. Caban testified that he looked inside the vehicle because he believed it was possible that § 87(2)(b) was reaching for a weapon when he was motioning towards his right leg, as discussed above. He also believed this because of § 87(2)(b)’s raised voice and his cursing. There were no additional reasons he entered the vehicle. Sgt. Caban did not observe or recover anything inside the vehicle (BR 03).

An officer breaching the plane of the car doorway with his body or his arm to reach inside the vehicle, even if to obtain a better visual of the interior of the car, does constitute a search of that

vehicle. There must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of a vehicle. People v. Hernandez, 238 A.D.2d 131(1997)(BR 10).

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Jose Cordero issued a summons to § 87(2)(b)

It is undisputed that PO Cordero issued § 87(2)(b) two summonses for disorderly conduct. The subsections were subsection one: fighting, and subsection two: unreasonable noise. § 87(2)(g)



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In the video footage taken by § 87(2)(b) several voices can be heard cursing and speaking at various levels. However, no crowd can be heard or seen, and there is no reference to a crowd in the area (BR 07, BR 08).

PO Cordero testified that for the entirety of the interaction, § 87(2)(b) was continuously yelling and cursing at the officers. During the stop, a crowd of people gathered on the sidewalk next to where the stop occurred and got as close as ten feet away from the officers. PO Cordero did not know precisely how many pedestrians gathered but believed it was more than five. The crowd began gathering at the beginning of the interaction. PO Cordero couldn't recall if the members of the crowd said anything to the officers. During his testimony, PO Cordero confirmed that he had issued § 87(2)(b) two summonses for disorderly conduct, however could only recall the subsection for one. The one he could recall was Subsection Two: Unreasonable Noise. He issued that summons because of § 87(2)(b)'s continued yelling and cursing which he stated caused the crowd to gather. There were no additional reasons that § 87(2)(b) was in violation of disorderly conduct (BR 01).

PO Molina initially testified that he was unaware of whether or not § 87(2)(b) was issued any summonses for disorderly conduct. When presented with the two summonses issued to § 87(2)(b)

§ 87(2)(b) PO Molina testified that he did not know why they were issued, because they were issued by PO Cordero and PO Molina had not discussed it with him. Based on PO Molina's observations, § 87(2)(b) was in violation of disorderly conduct for the entirety of the incident because he was yelling and screaming. PO Molina testified that § 87(2)(b) did not do anything physically threatening while on scene. He testified that a crowd gathered on the sidewalk approximately five to seven feet away from the officers. He did not know how many people were in the crowd nor could he estimate. He also did not know where they came from nor when they began to gather. PO Molina testified the members of the crowd were speaking but he did not know what they were saying and he did not interact with them (BR 02).

Sgt. Caban testified that the decision to issue § 87(2)(b) summonses for disorderly conduct was made by PO Cordero and that he did not weigh in on the decision. Sgt. Caban testified that, in his observations, § 87(2)(b) was in violation of disorderly conduct because he was yelling and cursing during the incident causing a crowd to gather. Sgt. Caban described the crowd as more than five people who stopped approximately 15 feet away from the officers on the sidewalk. The crowd never got closer than that and remained on the sidewalk. They did not communicate with the officers. When presented with Summons #§ 87(2)(b) for Disorderly Conduct: Fighting, Sgt. Caban stated that he did not specifically know why it was issued as he did not discuss it with PO Cordero. He stated that, in his observations, § 87(2)(b) was in violation of Disorderly Conduct because he was yelling and cursing. In addressing this summons specifically, Sgt. Caban testified that while he was being frisked, § 87(2)(b) was moving his body and hands (BR 03).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof he engages in fighting or in violent, tumultuous or threatening behavior or he makes unreasonable noise. Necessary for a charge of disorderly conduct is that the situation takes on a public, rather than an individual, dimension. Thus, an individual is guilty of disorderly conduct only when the situation becomes a potential or immediate public problem. People v. Baker. 20 N.Y.3d 354 (BR 11). New York State Penal Law 240.20 (BR 15).

§ 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) and § 87(2)(b) were involved in one prior CCRB complaint. § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- During his 15 year tenure, Sgt. Caban has been the subject of 50 prior CCRB allegations involving 18 prior cases. In Case #200306533, the following allegations were substantiated: Refusal to provide name/shield number, Retaliatory Summons, and Offensive language. For each the board recommended charges and the NYPD dismissed the charges. In Case #200711818, one allegation of Physical Force was substantiated and the board recommended instructions. The NYPD concurred with that recommendation. Of the other cases, three (Case #s 201705685, 201706160, and 201707277) are still pending a CCRB disposition.
- During his 12 year tenure, PO Molina has been the subject of 17 prior CCRB allegations involving seven prior cases. None of these allegations were closed by the board as substantiated.
- During his three year tenure, PO Cordero has been the subject of 12 prior CCRB allegations involving three prior cases. In Case #201702059, one allegation of Frisk was substantiated and the board recommended Command Instructions. As of the date of this report, the NYPD has not issued a disposition. One of the prior complaints—Case # 201705685—is still pending a CCRB disposition.

Mediation, Civil and Criminal Histories

- As no sworn statement was obtained from any civilian, mediation could not be offered.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 15

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer:

Signature

Print Title & Name

Date